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**MORTON & BASSETT, LLC**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

16 MORTON & BASSETT, LLC, a California  
17 limited liability company,  
18 Plaintiff,  
19 v.  
20 ORGANIC SPICES, INC., a California  
21 Corporation,  
Defendant

23 ORGANIC SPICES, INC., a California  
Corporation,

#### **Counterclaimant,**

v.  
MORTON & BASSETT, LLC, a California  
limited liability company,  
Counterclaim-Defendant

## **STIPULATION**

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that, pursuant to Rules 6-1(b) and 6-2 of the Civil Local Rules (Civil L.R.), Plaintiff and Counter-Defendant Morton & Bassett, LLC (“M&B”) and Defendant and Counterclaimant Organic Spices, Inc. (“Organic Spices”) (hereinafter collectively “Parties”), stipulate and seek an order from the Court as follows:

WHEREAS, the Parties stipulate – subject to Court approval and availability – to one modification to the schedule, specifically **to reschedule the hearing date for Organic Spices' Motion for Summary Judgment, or in the Alternative Motion for Summary Adjudication ("Motion for Summary Judgment")**, from December 8, 2016, to December 15, 2016, because Organic Spices' counsel was recently assigned a trial date in another matter that conflicts with the hearing date as scheduled, as set forth below:

WHEREAS, pursuant to the Court Order, the hearing date for Organic Spices' Motion for Summary Judgment is **currently scheduled for December 8, 2016**:

WHEREAS, there is good cause, and an unfortunate and unavoidable reason, for the Parties' stipulated request to modify the Court's Scheduling Order:

WHEREAS, until November 18, 2016, the Parties had no conflicts for December 8, 2016;

WHEREAS, on Friday, November 18, 2016, counsel for Organic Spices attended a docketing call (in another matter, for another client) in the Western District of Texas (Austin) and was informed by the Honorable Sam Sparks that their trial in that matter was going to begin on Monday, December 5, 2016, which would conflict with the hearing scheduled in this matter;

WHEREAS, the trial date was previously scheduled generally for December 2016, and could have been scheduled over a three-week span, and did not necessarily conflict with the hearing date in this matter until notice was provided on November 18;

WHEREAS, counsel for Organic Spices anticipates that it is more likely than not that the 2-4 day trial and travel will preclude counsel's – namely, both Robert Andris and Michael Kanach's – ability to attend and argue Organic Spices' Motion for Summary Judgment the same week, on Thursday, December 8, 2016, in San Francisco, CA. Unfortunately, counsel cannot be two places at

1 the same time;

2 WHEREAS, the following Monday, November 21, 2016, counsel for Organic Spices contacted  
 3 counsel for M&B to discuss the conflict and discuss amicable resolutions to Organic Spices' counsel's  
 4 unforeseen scheduling concern;

5 WHEREAS, the Parties contacted the Court clerk on November 22, 2016, to discuss options for  
 6 alternative dates and the Court's impacted schedule;

7 WHEREAS, December 15, 2016, is the next Thursday and both Parties are available;

8 WHEREAS, the Parties waited until December 1 to file this stipulated request because it was  
 9 the first instance when counsel for Organic Spices could confirm (a) that their other matter was not  
 10 going to settle prior to trial, and (b) the Parties' availability for a hearing on December 15, 2016<sup>1</sup>;

11 WHEREAS, regarding previous extensions, the Parties have previously worked together to  
 12 resolve scheduling disputes or concerns and propose reasonable schedules for the Court;

13 WHEREAS, the Parties have complied with the other dates in the Scheduling Order, dated  
 14 September 27, 2016 (ECF 61), namely M&B filing a second amended complaint, Organic Spices filing  
 15 a dispositive motion and the Parties filing their respective opposition and reply brief and related  
 16 administrative motions;

17 WHEREAS, pursuant to Court Order the following dates remain on the Scheduling Order:

<b>Litigation Event</b>	<b>[Proposed] Court Deadline</b>
Dispositive Motion Hearing Date	December 8, 2016 at 2:00 p.m.
Pretrial Conference	February 28, 2017 at 3:00 p.m.
Jury Selection and Trial	March 13, 2017 at 8:30 a.m. (7 court days)

21 WHEREAS, December 15, 2016, is the next Thursday on the calendar;

22 WHEREAS, the Parties do not believe that any further modifications of the Court's Scheduling  
 23 Order will be necessary, should the Court be able to hear the motion on December 15, 2016.

25 <sup>1</sup> The Parties waited to file this Stipulation until December 1, because – until that time – counsel for  
 26 Organic Spices was unavailable on the December 15, 2016 date. Until the evening of November 30,  
 27 2016, counsel for Organic Spices had a scheduling conflict on December 15, 2016, a hearing on a  
 28 motion for summary judgment in another matter (a separate matter, for a different client). On  
 November 30, counsel for Organic Spices resolved that matter, and thus the December 15, 2016 date  
 became available. The Parties met and conferred at their earliest opportunity, the following day, on  
 December 1, 2016, and prepared this Stipulation proposing a December 15, 2016 hearing date.

1 Specifically, the Parties believe that a hearing date of December 15, 2016, would not impact the  
2 remaining dates on the Scheduling Order, nor the pre-trial dates set forth in Judge Gilliam's Civil  
3 Pretrial & Trial Standing Order;

4 WHEREAS, the Parties do not seek to modify the trial date;

5 WHEREAS, counsel for Organic Spices is unavailable Thursday, December 22, 2016;

6 WHEREAS, the Parties are available other Thursdays, namely December 29, 2016, or January  
7 5, 12, or 19, 2017, but the Parties share a concern that a later hearing date (and later Order) might  
8 interfere with the Parties' trial date and pre-trial deadlines; and

9 WHEREAS, the Parties understand the Court's calendar currently shows no other available  
10 dates prior to February 2017, they seek this modification to accommodate this scheduling concern.

11

12 **STIPULATION**

13 The Parties, by and through their respective counsel of record, hereby stipulate as follows,  
14 subject to approval by the Court:

15 The hearing of Organic Spices' Motion for Summary Judgment currently scheduled for  
16 December 8, 2016, is hereby rescheduled to **December 15, 2016, at 2:00 p.m.**

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20 DATED: December 1, 2016

MEYLAN DAVITT JAIN AREVIAN & KIM LLP  
HOLMES WEINBERG, A.P.C.

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22

23 By: /s/ Robert L. Meylan

24 Robert L. Meylan  
Shaunt T. Areavian

25 Attorneys for Plaintiff and Counter-Defendant  
MORTON & BASSETT, LLC

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2 DATED: December 1, 2016

GORDON & REES LLP

3  
4 By: /s/ Michael D. Kanach

5 Robert P. Andris

6 Michael D. Kanach

7 Attorneys for Defendant and Counter-Claimant  
8 ORGANIC SPICES, INC.

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## **ATTESTATION OF SIGNATURES**

I, Michael D. Kanach, counsel for Defendant and Counter-Claimant Organic Spices, Inc., attest that I obtained authority from counsel for Plaintiff Morton and Bassett, LLC, for this concurrence in the filing's content and their authorization of the filing with all signatories listed, and on whose behalf the filing is submitted.

DATED: December 1, 2016

GORDON & REES LLP

By: /s/ Michael D. Kanach

Robert P. Andris

Michael D. Kanach

Attorneys for Defendant and Counter-Claimant  
ORGANIC SPICES, INC.

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 The hearing of Organic Spices' Motion for Summary Judgment currently scheduled for December 8,  
3 2016, is hereby rescheduled to **December 22, 2016, at 2:00 p.m.**

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5 DATED: December 5, 2016

  
6 Honorable Haywood S. Gilliam, Jr.  
7 United States District Judge

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